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Paper No. 8

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**APR 29 2002**

In re Application of	:	<b>OFFICE OF PETITIONS</b>
Eric P. Traut	:	
Application No. 09/747,492	:	<b>DECISION GRANTING PETITION</b>
Filed: December 21, 2000	:	<b>UNDER 37 CFR 1.137(f)</b>
Attorney Docket No. 068167.0105	:	

This is a decision on the petition filed April 3, 2002, to revive the instant nonprovisional application under the unintentional provisions of 37 CFR 1.137(f).

The petition is **GRANTED**.

This application became abandoned pursuant to 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

Petitioner states that, on December 19, 2001, he filed a request to rescind the previously filed nonpublication request. However, the request failed to state that this application is the subject of an application filed in another country, or under a multilateral agreement, that requires publication at 18 months after filing, which is the basis for the filing of the instant petition to revive. Therefore, petitioner requests that, if it is determined that this application is abandoned by the passage of 45 days from the date of the filing of the application under the Patent Cooperation Treaty without the filing of the notice required under 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c), the application be revived under the unintentional provisions of 37 CFR 1.137(f).

A review of the application file discloses that a request to rescind a previously filed nonpublication request was submitted on December 19, 2001. However, the request failed to notify the Office that the subject application was filed in a foreign country or under a multilateral international agreement within 45 days after the

date of filing of such foreign or international application as required by 35 USC 122(b)(2)(B)(iii). It is not sufficient for an applicant to merely rescind a previously filed nonpublication request without also notifying the Office within 45 days of the fact that the instant application is the subject of an application that was filed in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

In view of the above, the filing of a petition under 37 CFR 1.137(f) is the appropriate avenue of relief. The instant petition has been found in compliance with 37 CFR 1.137(f). Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days as provided by 35 USC 122(b)(2)(B)(iii) is accepted as having been unintentionally delayed.

A Corrected Filing Receipt which sets forth the projected publication date of July 25, 2002, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8680.

This application is being forwarded to Technology Center AU 2123 for examination in due course.

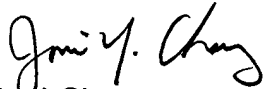


Frances Hicks

Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner  
for Patent Examination Policy



Conferree: Joni Chang

ATTACHMENT: Corrected Filing Receipt